

### **REMARKS**

In the Official Action mailed 09 July 2008, the Examiner reviewed claims 22-24 and 75-81. The Examiner has rejected claims 22 and 75 under 35 U.S.C. §102(a) or 35 U.S.C. §103(a); and has rejected claims 23, 24, 76 and 77-81 under 35 U.S.C. §103(a).

Applicant has amended claims 22, 24, 75 and 77 and has canceled claims 23, 76 and 78-81. Claims 22, 24, 75 and 77 remain pending after entry of this amendment.

#### **Rejection of Claims 22 and 75 under 35 U.S.C. §102(a) or 35 U.S.C. §103(a)**

The Examiner has rejected claims 22 and 75 under 35 U.S.C. §102(a) as being anticipated by Tsugita *et al.*, (US Patent 6,231,544) or, in the alternative, under 35 U.S.C. §103(a) as obvious over Tsugita *et al.*, (US Patent 6,231,544) in view of Evans *et al.* (US Patent 5,540,658).

#### **Rejection of Claims 23, 24, 76 and 77-81 under 35 U.S.C. §103(a)**

The Examiner has rejected claims 23, 24, 76 and 77-81 under 35 U.S.C. §103(a) as being unpatentable over Tsugita *et al.*, (US Patent 6,231,544) as applied to Claims 22 and 75, in view of Barbut *et al.* (US Patent 5,662,671).

#### **The Cited Art**

##### **Tsugita**

Figures 1-3 of the patent to Tsugita discloses a blood filter and balloon occluder comprising a pressurizing cannula 50 to which a balloon occluder 65 is mounted. A blood filter surrounds a blood cannula 10 and includes an inflatable ring 70 with holding strings 55 connecting ring 70 to the distal region of cannula 50. Ring 70 is also connected to a conical shaped filter mesh 75 on the outer side of ring 70. (16/45-56; 17/8-24)

In use, the cannula is introduced into the aorta through an incision. Ring 70 of the filter is then inflated to contact the inside of the aorta. Balloon occluder 65 is then deployed upstream of the filter. When the procedure is completed, balloon occluder 65 is deflated. Any embolic material dislodged by the expansion or contraction of occluder 65 is captured by the filter. The

ring 70 is depressurized to capture dislodge material within filter mesh 75 and the device is removed. (19/65-20/29)

Balloon occluder 65 of figures 1-3 is replaced in the embodiment of figure 31 by a dam structure 513. Dam structure 513 optionally includes a balloon 514. Dam structure 513 has a plurality of lifting arms 551. (30/20-27)

### **Barbut**

The patent to Barbut shows, at figures 20 and 21, a catheter 50 having a filtration assembly 69 mounted thereto at a distance space apart from the distal end of the catheter. An atherectomy assembly 80 passes through and is extendable from the lumen formed within catheter 50 so to engage plaque as shown in figures 20 and 21. Positioning members 90, 91, which may be inflatable, are mounted to catheter 50 at a position between filtration assembly 69 and the distal end of the catheter. Positioning members 90, 91 extend generally radially outwardly from the catheter and can be used to laterally position atherectomy assembly 80 within the vessel so to engage the plaque.

### **The Cited Art Distinguished**

**Independent claims 22 and 75** have each been amended and now incorporate aspects of claims 80 and 78, respectively. These claimed combinations are allowable over the combination of Tsugita in view of Barbut for the following reasons.

First, the positioning members 90, 91 of Barbut, characterized by the Examiner as partially occluding the blood vessel, are not part of a vessel-occluding assembly housed at least partially within and axially slidable through the lumen of catheter 50 of Barbut and are not positionable at and extendable from the distal end of catheter 50, as is presently claimed. Rather, positioning members 90, 91 extend outwardly from catheter 50 at a position spaced apart from the distal end of the catheter.

Second, positioning members 90, 91 of Barbut are not "fully-vessel-occluding" elements as is presently claimed. As stated by the Examiner, positioning members 90, 91 only partially occlude a blood vessel; they could not be considered fully-vessel-occluding elements.

Accordingly, claims 22 and 75 are allowable over the cited art.

The **dependent claims** are directed to specific novel subfeatures of the invention and are allowable for that reason as well as by depending from novel parent claims.

### CONCLUSION

It is respectfully submitted that this application is now in condition for allowance, and such action is requested. If the Examiner believes a telephone conference would aid the prosecution of this case in any way, please call the undersigned at (650) 712-0340.

The Commissioner is hereby authorized to charge any fee determined to be due in connection with this communication, or credit any overpayment, to our Deposit Account No. 50-0869 (GTEC 1001-4).

Respectfully submitted,

Dated: 09 October 2008

/James F. Hann/

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